

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 781

Introduced by Senator Florez

February 22, 2005

An act to ~~amend Section 867 of~~ *add Section 867.1* to the Financial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

SB 781, as amended, Florez. Financial institutions: check holds.

Existing *state* law requires that funds deposited in an account at a depository institution be made available on the 2nd business day after the business day on which the funds are deposited, in the case of a cashier's check, certified check, teller's check, or depository check. *The federal Expedited Funds Availability Act establishes funds availability schedules for funds deposited in an account at a depository institution.*

~~This bill would instead require funds from any check that is deposited in an account at a depository institution to be made available on the same business day on which the funds are deposited~~ *provide that if funds deposited by check in an account at a depository institution are required to be made available at an earlier time pursuant to the provisions of the federal Expedited Funds Availability Act than the time provided in state law, the provisions of the federal Expedited Funds Availability Act would apply.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 867 of the Financial Code is amended~~
2 ~~to read:~~

1 SECTION. 1. Section 867.1 is added to the Financial Code,
2 to read:

3 867.1. If funds deposited by check in an account at a
4 depository institution are required to be made available at an
5 earlier time pursuant to Section 4002 of Title 12 of the United
6 States Code (federal Expedited Funds Availability Act) than the
7 time provided in Section 867, the time limitations set forth in the
8 provisions of the federal Expedited Funds Availability Act shall
9 apply.

10 ~~867. (a) Funds deposited in an account at a depository~~
11 ~~institution shall be available on the same business day on which~~
12 ~~those funds are deposited in the case of any check, including a~~
13 ~~cashier's check, certified check, teller's check, or depository~~
14 ~~check, subject to the following:~~

15 ~~(1) The check is endorsed only by the person to whom it was~~
16 ~~issued.~~

17 ~~(2) The check is deposited in a receiving depository institution~~
18 ~~that is staffed by individuals employed by that institution.~~

19 ~~(3) The check is deposited with a special deposit slip that~~
20 ~~indicates it is a cashier's check, certified check, teller's check, or~~
21 ~~depository check, as the case may be.~~

22 ~~(4) The check is deposited into an account in the name of a~~
23 ~~customer that has maintained any account with the receiving~~
24 ~~depository institution for a period of 60 days or more.~~

25 ~~(5) The face amount of the check is for five thousand dollars~~
26 ~~(\$5,000) or less.~~

27 ~~In the case of funds deposited on any business day in an~~
28 ~~account at a depository institution by depository checks, the~~
29 ~~aggregate amount of which exceeds five thousand dollars~~
30 ~~(\$5,000), this subdivision shall apply only with respect to the~~
31 ~~first five thousand dollars (\$5,000) of the aggregate amount.~~

32 ~~(b) Subdivision (a) does not apply to a depository check if the~~
33 ~~receiving depository institution reasonably believes that the~~
34 ~~check is uncollectible from the originating depository institution.~~
35 ~~For purposes of this subdivision, "reasonable cause to believe"~~
36 ~~requires the existence of facts that would cause a well-grounded~~
37 ~~belief in the mind of a reasonable person. These reasons shall~~
38 ~~include, but not be limited to, a belief that (1) the drawer or~~
39 ~~drawee of the depository check has been, or will imminently be,~~
40 ~~adjudicated a bankrupt or placed in receivership or (2) the~~

1 ~~depository check may be involved in a fraud or in a scheme~~
2 ~~commonly known as “kiting.” In these situations, the depository~~
3 ~~institution electing to proceed under this subdivision shall so~~
4 ~~notify the drawer and drawee no later than the close of the next~~
5 ~~business day following deposit of the depository check.~~

6 ~~(c) For purposes of this section, the following terms have the~~
7 ~~following meanings:~~

8 ~~(1) “Account” means any demand deposit account and any~~
9 ~~other similar transaction account at a depository institution.~~

10 ~~(2) “Business day” means any day other than a Saturday,~~
11 ~~Sunday, or legal holiday.~~

12 ~~(3) “Cashier’s check” means any check that is subject to the~~
13 ~~following:~~

14 ~~(A) The check is drawn on a depository institution.~~

15 ~~(B) The check is signed by an officer or employee of the~~
16 ~~depository institution.~~

17 ~~(C) The check is a direct obligation of the depository~~
18 ~~institution.~~

19 ~~(4) “Certified check” means any check with respect to which a~~
20 ~~depository institution certifies the following:~~

21 ~~(A) That the signature on the check is genuine.~~

22 ~~(B) The depository institution has set aside funds that are~~
23 ~~equal to the amount of the check and will be used only to pay~~
24 ~~that check.~~

25 ~~(5) “Depository check” means any cashier’s check, certified~~
26 ~~check, teller’s check, and any other functionally equivalent~~
27 ~~instrument, as determined by the Board of Governors of the~~
28 ~~Federal Reserve System or the commissioner.~~

29 ~~(6) “Depository institution” has the meaning given in clauses~~
30 ~~(i) to (vi), inclusive, of Section 19(b)(1)(A) of the Federal~~
31 ~~Reserve Act.~~

32 ~~(7) “Teller’s check” means any check issued by a depository~~
33 ~~institution and drawn on another depository institution.~~

34 ~~(d) Except for the specific circumstances and checks described~~
35 ~~in this section, this section is not intended to restrict or preempt~~
36 ~~the regulatory authority of the commissioner.~~

37 ~~(e) In the event of a suspension or modification of any similar~~
38 ~~provisions in the federal Expedited Funds Availability Act, the~~
39 ~~effect of this section shall be similarly suspended or modified.~~

1 ~~SEC. 2. It is the intent of the Legislature that the provisions~~
2 ~~of Section 1 supersede the funds availability schedules set forth~~
3 ~~in the federal Expedited Funds Availability Act, consistent with~~
4 ~~the provisions in that act.~~

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